IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

CRP.No. 213 of 2007()

AGAINST THE ORDER DATED 12/01/2007 IN IA. 892 /2006 IN OS.38/2000 of M.C.,VADAKKANCHERRY

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REVN. PETITIONER: RESPONDENT/PLAINTIFF

K.M.JOY, S/O. LATE MATHU,
KAKKASSERY HOUSE, CHOONDAL, NOW RESIDING AT
KOLAZHI, NEAR CHINMAYA MISSION SCHOOL, THRISSUR.

BY ADV. SRI.SAJITH KUMAR KANGHINGHAT
SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: PETITIONER/DEFENDANT NO.2

K.M.SEBASTIAN, S/O. LATE MATHU,
KAKKASSERY HOUSE, CHOONDAL, NOW RESIDING AT
UASC, P.B.NO.55586, DEIRA, DUBAI.

BY ADV. SRI.P.V.CHANDRA MOHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, ALONG WITH CRP NO. 217 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.Nos.213 & 217 OF 2007

Dated this the 20th June, 2007.

O R D E R

These revision petitions are preferred against the order in I.A.892 & 891/06 in O.S.38/00 of the Munsiff Court, Wadakancherry. The second defendant in the suit filed an application for setting aside the ex parte decree and as a matter of precaution also filed an application to condone the delay in filing the petition to set aside the ex parte decree. It is the case of the second defendant that the property in dispute had been gifted in his favour by his mother viz., the first defendant in the year 1982 and he had been in possession of the property and he had assigned 26 cents of property and the balance property is in his possession and therefore the suit for partition is not maintainable at all. A suit was filed by his brother for partition suppressing or not revealing about the factum of gift. Even according to the plaint the second defendant was working abroad and that is why his avocation is described as . So from the very plaint itself it is crystal clear that the second defendant was residing at gulf country. Admittedly there has been no personal service of notice on the second defendant. A notice was served on the third defendant. According to the

second defendant, the third defendant is a mentally sick person also. Whatever it may be a service on another person can be considered to be sufficient service only if the conditions under Order V Rule 15 CPC are complied with. Order V Rule 15 reads as follows:

> **"Where service may be on an adult member of defendant's family.** Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, where male or female, who is residing with him."

In this case the second defendant was in gulf country and there was no likelihood of his coming back to the native place at a reasonable time and at the time of service of notice the second defendant was not residing with the third defendant. When these are the facts a service cannot be effected under Order V Rule 15 and if effected cannot be held to be valid service. The trial court has elaborately considered these materials and has arrived at a decision that the service of notice on the second defendant is not proper and it has to be held that there had been no service of notice on the second defendant. When it is so, it cannot be held that there is any limitation for filing the application. It is averred that when he came to know about

the decree in 2007 and thereafter has filed the application. Therefore, the order passed by the Trial Judge does not suffer from any infirmity and it is only in order. It is also to be stated that now the plaintiff has filed a suit for setting aside the gift deed on the strength of which the second defendant claims exclusive right over the property. That is also pending before one of the courts in Thrissur. Therefore, in the light of the above discussion, I find that the order passed by the court below is perfectly in order and there is nothing to interfere with the said decision. Therefore, both civil revision petitions are dismissed.

M.N.KRISHNAN
Judge

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